

1979 WL 42804 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 9, 1979

***1 Re: Rate of Interest for Purchase Money Mortgage**

The Honorable Coleman G. Poag
Senator
Senatorial District No. 6
Post Office Box 10067
Rock Hill, South Carolina 29730

Dear Representative Poag:

Thank you very much for your letter of January 23, 1979, concerning Irvin Parker's opinion letter to the South Carolina Association of Realtors. I have reviewed the question as to the permissible interest rate that may be charged by a homeowner who accepts a second mortgage on the real estate as security for his equity interest in the property, and concur with Mr. Parker's opinion.

Whether the general usury statute or the Consumer Protection Code applies to a particular real estate transaction is often a difficult question to answer. As you are probably aware, Section 34-31-30 of the South Carolina Code of Laws, 1976, as amended by Act No. 644 of 1978, restricts loans of less than One Hundred Thousand (\$100,000.00) Dollars secured by a first mortgage on real estate to a maximum interest rate of ten (10%) percent. On the other hand, [Section 37-2-605 of the South Carolina Code of Laws, 1976 \(Consumer Protection Code\)](#) provides that with respect to a credit sale other than a consumer credit sale, the parties may contract for the payment by the buyer of any credit service charge (which, of course, includes interest). Generally, it has been concluded that the general usury statute applies to loans of money, whereas the Consumer Protection Code would apply to credit sales.

Since the hypothetical situation you posed was a credit sale of the homeowners equity interest in the property, I agree that the Consumer Protection Code rather than the general usury statute would govern the rate of interest. I further agree with Mr. Parker's conclusion that this would be a credit sale other than a consumer credit sale and, therefore, the parties may contract for the payment of any credit service charge.

Very truly yours,

Richard B. Kale, Jr.
Assistant Attorney General

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